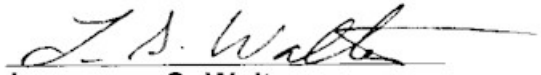


**This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.**

**IT IS SO ORDERED.**

**Dated: June 25, 2013**



  
Lawrence S. Walter  
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

In re:

RICHARD D. HALL and  
CHARLENE HALL,

*Debtors*

Case No. 08-36105

Chapter 13

Judge Lawrence S. Walter

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**ORDER DENYING DEBTORS' MOTION FOR SANCTIONS  
FOR VIOLATION OF AUTOMATIC STAY [DOC. 65]**

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This matter is before the court on the motion filed by Debtors Richard and Charlene Hall (collectively "Debtors") requesting sanctions and a determination that Wall and Associates, Inc. ("Wall") willfully violated the automatic stay pursuant to 11 U.S.C. § 362 by refusing to return funds to the Debtors for post-petition services that the Debtors ultimately deemed unsatisfactory (hereinafter "motion for sanctions") [Doc. 65]. Wall filed a response in opposition to the Debtors' motion for sanctions [Doc. 68]. Subsequently, the parties filed a joint motion [Doc. 74]

in which the parties requested that the court waive the hearing and determine liability upon the filings of the parties including joint stipulations [Doc. 73]. The court accepted the request and entered an agreed order waiving the hearing [Doc. 78].

After careful review of the documents of record, as well as the court's own research, the court concludes that the Debtors' motion for sanctions should be and is hereby denied. The conclusions in support of this decision are provided below.

### **FACTUAL FINDINGS**

The following facts are from the parties' joint stipulations, filings, and other documents of record. Debtors filed their joint Chapter 13 bankruptcy petition on November 26, 2008 [Doc. 1]. At that time, Wall was not a creditor of the Debtors nor listed as one in the Debtors' schedules. Subsequently, the court confirmed the Debtors' original Chapter 13 plan proposing to pay their prepetition creditors over a period of time.<sup>1</sup>

Significantly, both the Debtors' Chapter 13 plan ("plan") [Doc. 2] and order confirming the Debtors' plan ("confirmation order") [Doc. 27] provide the Debtors with information and warnings about property of the estate and their responsibility to protect it. More specifically, the plan and confirmation order state that property of the estate, including property defined under 11 U.S.C. § 1306(a), does not vest in the Debtors until discharge, dismissal or conversion of the case [Doc. 2, ¶ 9; Doc. 27, ¶ 6]. It is the Debtors who are responsible for the "preservation and protection" of this property and must not dispose of or transfer property of the estate, outside the terms of the plan, without consent of the Chapter 13 Trustee or court [Doc. 27, ¶¶ 5 and 6]. The confirmation order further cautions the Debtors not to incur additional consumer debt in excess of \$1,000 without written approval of the court or Chapter 13 Trustee [*Id.*, ¶ 8].

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<sup>1</sup> In the original Chapter 13 plan, the Debtors proposed to pay prepetition creditors over a 49 month period [Doc. 2]. However, through subsequent modification, the Debtors extended payments to a 60 month (five year) period [Docs. 29 and 30].

In June of 2012, while the plan remained in effect, the Debtors entered into a contract with Wall to handle the Debtors' post-petition federal and state tax issues. Wall is not a law firm or a "CPA firm" but handles administrative tax resolution and representation with taxing agencies. Neither Wall nor the Debtors sought permission from the court to enter the contract nor is it asserted that permission was sought from the Chapter 13 Trustee. Pursuant to the contract, Debtors paid Wall a total of \$2,400.00 over a period of time from June to November of 2012.

The Debtors were dissatisfied with Wall's services and contacted their bankruptcy attorney. The Debtors' attorney advised them to cease payments to Wall and cancel the contract. They complied. The bankruptcy attorney then sent Wall a letter asserting that Wall was in violation of the automatic stay and that all money paid by the Debtors should be immediately refunded. Wall sent a responsive letter denying any wrongdoing and refusing to refund the money to the Debtors as requested.

Debtors' attorney subsequently filed the motion for sanctions asserting that Wall's conduct in accepting money without approval as a professional and refusing to return money that was property of the estate is an intentional violation of the automatic stay. In the motion, Debtors request both compensatory and punitive damages totaling \$25,000.00.

### **LEGAL CONCLUSIONS**

In their motion, the Debtors argue that Wall violated the automatic stay by accepting and refusing to return \$2,400.00 in payments from the Debtors for tax services rendered post-petition and prior to the Debtors' discharge. It is true that the automatic stay provisions of 11 U.S.C. § 362 prohibit any act by an entity such as Wall "to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. §

362(a)(3). It is also true that “property of the estate” in a Chapter 13 case includes earnings acquired by a debtor after commencement of the case which is, presumably, the source of the funds paid to Wall. 11 U.S.C. § 1306(a). Furthermore, such post-petition earnings remain property of the estate until discharge, conversion or dismissal pursuant to the language in the standardized Dayton Chapter 13 Plan and confirmation order [Doc. 2, ¶ 9; Doc. 27, ¶ 6]. See 11 U.S.C. § 1327(b) (allowing a plan and/or order confirming a plan, such as the ones used in Dayton, to deviate from the statutory default of having property of the estate vest in the debtor upon confirmation); *Clark v. United States (In re Clark)*, 207 B.R. 559, 563-65 (Bankr. S.D. Ohio 1997) (discussing how the language in the standard Dayton plan and confirmation order deviates from the statutory default and how that deviation impacts creditor collection efforts). Consequently, it would appear that Wall’s actions of accepting and retaining \$2,400.00 of the Debtors’ post-petition earnings prior to the discharge in this Chapter 13 case would at least technically violate the automatic stay under 11 U.S.C. § 362(a)(3).<sup>2</sup>

However, the facts of this case do not fit comfortably within the § 362(a) automatic stay provisions. First and foremost, the automatic stay is intended to protect the debtor and property of the estate from acts of collection and harassment by creditors. *In re Webb*, 472 B.R. 665, 2012 WL 2329051, at \*12 (B.A.P. 6<sup>th</sup> Cir. April 9, 2012). In this case, there is no aggressive act

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<sup>2</sup> Wall argues that the automatic stay was not violated because Wall is not a prepetition creditor and did not attempt to collect on a prepetition debt. While true, the basis for the assertion of a stay violation is not that Wall was attempting to collect on a prepetition debt, but, instead, that Wall exerted control over property of the estate via the Debtors’ payment of post-petition earnings to Wall. Under the standard Dayton plan and confirmation order, property of the estate, including post-petition earnings, remain protected by the automatic stay until a debtor’s discharge. Even if the stay is not implicated by a voluntary transfer of property in payment of a post-petition creditor’s services, as discussed in this decision, a bankruptcy trustee retains the ability to avoid unauthorized transfers of estate property via 11 U.S.C. § 549. As such, the most prudent course of action for a potential post-petition creditor to take when dealing with a debtor in an active Chapter 13 case is to ensure that approval is obtained from the Chapter 13 Trustee and court, relief from the stay is granted and/or a post-petition claim is filed under 11 U.S.C. § 1305 prior to accepting or retaining significant funds from a debtor. See *Clark*, 207 B.R. at 565-66; *RTO Rents v. Benson (In re Benson)*, 116 B.R. 606, 609 (Bankr. S.D. Ohio 1990). See also Keith M. Lundin and William H. Brown, Chapter 13 Bankruptcy, 4<sup>th</sup> Ed., § 245.1, at ¶ 5, Sec. Rev. June 8, 2004, [www.Ch13online.com](http://www.Ch13online.com).

by a creditor to gain control of property of the estate, but, instead, a voluntary act on the part of the Debtors to transfer property of the estate freely and willingly to a third party. It cannot be overemphasized that it is the Debtors who sought out Wall's services, entered a post-confirmation contract and gave \$2,400.00 in payments to Wall in exchange for Wall's post-petition services. Furthermore, the Debtors entered the contract and transferred the funds to Wall without first obtaining approval from the Chapter 13 Trustee or this court. In bankruptcy parlance, this amounts to an unauthorized transfer of estate property by the Debtors.

Many courts have questioned whether a debtor's unauthorized voluntary transfer of property of the estate even implicates a stay violation under 11 U.S.C. § 362. These courts note that a specific Bankruptcy Code section, 11 U.S.C. § 549,<sup>3</sup> has been enacted to allow a trustee, on behalf of the estate, to avoid a debtor's unauthorized post-petition transfer. Concluding that such transfers are also void / voidable in violation of the automatic stay would render much if not all of § 549's provisions superfluous. Consequently, although there is some conflict in this area, and there may be some overlap between § 362 and § 549, courts in the Sixth Circuit and elsewhere have generally agreed that no violation of the automatic stay occurs when a debtor voluntarily transfers estate property to a creditor. *See Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 574 (9<sup>th</sup> Cir. 1992) (resolving the apparent conflict in coverage between § 362 and § 549 by concluding that § 362's automatic stay "does not apply to sales or transfers of property initiated by the debtor"); *Buckeye Check Cashing, Inc. v. Meadows (In re Meadows)*, 396 B.R. 485, 496-497 (B.A.P. 6<sup>th</sup> Cir. 2008) (citing courts that find a § 549(a) avoidance action, rather

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<sup>3</sup> 11 U.S.C. § 549(a):

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate—

(1) that occurs after the commencement of the case; and

(2) (A) that is authorized only under section 303(f) or 542(c) of this title; or

(B) that is not authorized under this title or by the court.

than stay violation sanctions, the proper choice for recovering post-petition transfers); *Rathbone v. Lake (In re Consolidated Partners Invest. Co.)*, 156 B.R. 982, 984-85 (Bankr. N.D. Ohio 1993) (noting that transfers made voluntarily by a debtor to a creditor are not an act against the debtor or property of the debtor and do not violate the automatic stay making § 549 the only method of avoiding such post-petition transfers). This case law supports that the automatic stay is not implicated by the Debtors' voluntary transfer of estate property and, correspondingly, their request for § 362 sanctions must be denied.

Even if the automatic stay were implicated in this case, the equities do not support granting the Debtors' request for sanctions. As noted before, the Debtors sought out Wall's services, entered a post-confirmation contract and gave \$2,400.00 in payments to Wall in exchange for Wall's post-petition services. By taking these actions, without prior approval from the Trustee or court, the Debtors violated a Local Bankruptcy Rule and their duties in the confirmation order including: 1) their duty to protect and preserve property of the estate [Doc. 27, ¶ 6]; 2) their duty not to dispose of or transfer property of the estate without Trustee or court approval [Doc. 27, ¶ 5]; and 3) their duty not to incur \$1,000.00 of consumer debt without Trustee or court approval [Doc. 27, ¶ 8 and Local Bankr. Rule 4001-3(b) ("The debtor may not incur non-emergency consumer debt in excess of one thousand dollars (\$1,000.00) . . . without written approval of the trustee or order of the court . . .")]. The Debtors provide no explanation in their filings for why they failed to comply with their bankruptcy responsibilities.

Instead, the Debtors ignored these requirements and only turned to their counsel and this court when they became dissatisfied with Wall's services. Debtors' counsel was advised of the payments to Wall only after Debtors "repeatedly were passed from agent to agent within Wall and Associates, Inc. and never received the assistance Debtors believe they were to receive"

leading to the eventual filing of the motion for sanctions by Debtors' counsel [Doc. 65, ¶¶ 10 - 16]. While the Debtors' problems with Wall may be genuine, this court is not the proper authority, nor is the motion for sanctions the proper vehicle, for dealing with the Debtors' contract dispute over the quality of Wall's services. More importantly, it is not within the spirit of the Bankruptcy Code to allow the Debtors to ignore their own responsibilities when incurring post-petition debt for services and then permit them to use the stay as a sword to take back payment for those services when they change their mind and/or become dissatisfied. *See In re Leavell*, 190 B.R. 536, 541 (Bankr. E.D. Va. 1995) (refusing to allow a Chapter 13 debtor who bought unnecessary goods after confirmation to "use the bankruptcy process as a sword against the unwary creditor who extended credit"). Indeed, courts have refused to enforce the stay on equitable grounds where a debtor has contributed to the problem of which he complains. *See, e.g., Job v. Calder (In re Calder)*, 907 F.2d 953, 956 (10<sup>th</sup> Cir. 1990); *Easley v. Pettibone Michigan Corp.*, 990 F.2d 905, 911 (6th Cir. 1993) (recognizing equitable exceptions to the automatic stay).

For these reasons, the Debtors' motion for sanctions [Doc. 65] **is denied**. While the court will not grant sanctions or order return of the funds to the Debtors, the court recognizes that Wall's retention of \$2,400.00 may have the potential to jeopardize continued distributions under the Chapter 13 plan. As such, the court's conclusions are without prejudice to any action by the Chapter 13 Trustee that may be necessary to enforce the Bankruptcy Code and relevant rules and/or preserve continued distributions under the Chapter 13 plan.

**SO ORDERED.**

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